Garcia v. Microsoft Corporation Doc. 17 Att. 4

Xbox Live Terms of Use and Privacy Statement

Last Updated: April 2004

1. THIS IS AN AGREEMENT BETWEEN YOU AND MICROSOFT

This is an agreement between you and Microsoft Corporation ("Microsoft") (located at One Microsoft Way, Redmond, WA 98052-6399; tel. (425) 882-8080) ("Agreement"). A printable version of the most current form of this Agreement is posted on the Xbox.com web site (http://www.xbox.com/live). Xbox Live (the "Service") is offered to you conditioned on your acceptance without modification of these terms, conditions, and notices contained herein. By selecting "ACCEPT" below, you are attaching your electronic signature to and agreeing to this Agreement. You understand that if you do not agree to this Agreement, you should select "DECLINE", discontinue your registration, and refrain from using Xbox Live. You represent that you are at least 18 years old, and all information that you submit is correct. Certain games, features, or events available via this Service may contain additional terms, codes of conduct or guidelines that govern use of those games or features or participation in those events (for example, sweepstakes and tournaments). In the event that any of the terms, conditions, and notices contained herein conflict with such other terms and guidelines contained within any particular game, feature or event, then these terms shall control. Any dealings with third parties or participation in promotions, sweepstakes and tournaments, and any other terms, conditions, warranties or representations associated with such dealings are solely between you and the third party. Microsoft does not endorse and will not be responsible or liable for any aspect of any such dealings.

By accepting this Agreement, you also consent to the terms and conditions of the Xbox Live Privacy Statement, which is incorporated by reference herein and located at the end of this Agreement and in the Policies section of the Xbox Dashboard. A printable version is also posted on the Xbox.com website (http://www.xbox.com/live).

Other services related to this Service may also be available to you on http://www.xbox.com/live or Xbox Live game-related web sites, and are subject to the terms and conditions of the applicable web site.

THIS AGREEMENT CONTAINS DISCLAIMERS OF WARRANTIES AND LIABILITY (See Sections 5.5, 5.7, 11, 12, 13 and 18); AND AN EXCLUSIVE REMEDY (See Section 12). THESE PROVISIONS FORM AN ESSENTIAL BASIS OF OUR BARGAIN.

2. HOW MICROSOFT MAY MODIFY THIS AGREEMENT

If Microsoft changes this Agreement, then it will notify you at least 30 days before such changes become effective. Microsoft may notify you via email, online posting or other means. If you do not agree to such changes, then you must cancel your subscription and stop using the Service before such changes become effective. Your continued use of the

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Service after the effective date of such changes constitutes your acceptance of and agreement to such changes.

3. NO COMMERCIAL, UNLAWFUL OR HARMFUL USE OF THE SERVICE

The Service is only for your personal use. You will not use the Service for commercial purposes. You will not use the Service in any way that is unlawful, or harms any of the Microsoft Parties as defined below or any customer of a Microsoft Party, as determined in Microsoft's sole discretion. Microsoft may tell you about certain specific harmful uses in the Xbox Live Code of Conduct, located in the Policies section of the Xbox Dashboard and at http://www.xbox.com/live/legal/policies.htm or other notices available through the Service, but has no obligation to do so. You may not use the Service in any way that breaches the Code of Conduct or other notice applicable to the Service.

Without limiting the generality of the foregoing, you may not use the Service in any manner that could damage, disable, overburden, or impair the Service (or the network(s) connected to the Service) or interfere with any other party's use and enjoyment of the Service. You may not attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through hacking, password mining or any other means. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available to you through the Service. Unless expressly allowed, you may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any information, software or services obtained from or through the Service.

4. YOU ARE RESPONSIBLE FOR THE SERVICE ACCOUNT

You are responsible for all activity under your Service account. You are responsible for maintaining the confidentiality of any password connected with your Service account. You may allow only members of your household to use your Service account.

Xbox Live is not intended for use by children under the age of 13. Subject to the foregoing, you represent that you are the parent or legal guardian of each minor that you allow to use your subscription. You acknowledge that you are aware that some features of Xbox Live may contain or expose users to material that is unsuitable for minors, and you agree to supervise usage by minors whom you permit to use Xbox Live. Using the Account Settings in the Xbox Dashboard, you may, among other things, prevent any user of your subscription from making additional purchases, and prevent any user from having access to voice chat, which will eliminate the ability of such user to communicate with other users. You remain responsible for any material to which a user of your subscription either gains or is denied access as a result of your use or non-use of the Account Settings.

5. CHARGES AND BILLING

5.1 Not Applicable to Some Situations. If the Service is provided for a fee paid to Microsoft (either currently, or in the future), then the terms of this Section 5 apply to you.

If you are using a Subscription Card to pay for the Service, then with the exception of Section 5.5 below, the terms of this Section 5 will not apply to you unless you create a Billing Account for the purchase of additional services (e.g., games, downloads, other premium features) not covered by the Subscription Card. Certain services may be provided for a fee paid to a company other than Microsoft, in which case the terms applicable to charges and billing are as set forth by the other company.

5.2 Payment Method; Trial Period Offers. Microsoft bills you through an online account (your "Billing Account") for the Service. You will pay Microsoft all charges at the prices then in effect for the Service ordered using your Billing Account, and you authorize Microsoft to charge, and you agree to pay using, your designated payment method (your "Payment Method") for the Service. Microsoft reserves the right to correct any errors or mistakes that it makes even if it has already requested or received payment. If you are participating in any trial period offer, you must terminate the Service by the end of the applicable trial period to avoid incurring applicable charges. If you do not terminate your trial subscription by the end of the trial period, then you hereby authorize Microsoft to charge your Payment Method for the Service. You represent that you are authorized to use the Payment Method. YOU MUST PROVIDE CURRENT, COMPLETE AND ACCURATE INFORMATION FOR YOUR BILLING ACCOUNT IN ORDER TO RECEIVE THE SERVICES ORDERED. YOU MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP YOUR BILLING ACCOUNT CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND YOU MUST PROMPTLY NOTIFY MICROSOFT IF YOUR PAYMENT METHOD IS CANCELED (FOR EXAMPLE, FOR LOSS OR THEFT) OR IF YOU BECOME AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF YOUR USER NAME OR PASSWORD. CHANGES TO SUCH INFORMATION CAN BE MADE IN THE ACCOUNT MANAGEMENT SECTION OF THE XBOX DASHBOARD, BY CALLING XBOX LIVE CUSTOMER SUPPORT, OR AS OTHERWISE SPECIFIED BY MICROSOFT.

5.3 Prices and Price Increases. Prices for the Service exclude all applicable taxes and telecommunication charges, unless expressly stated otherwise, and such taxes and charges are your responsibility. Currency exchange settlements will be based on agreements between you and the provider of your Payment Method (your "Payment Method Provider"). Microsoft may, in its sole discretion, change the pricing of the Service, from time to time. If there is a specific duration and price for your Service subscription, then that price will remain in effect for such duration, but continued use of the Service thereafter will be at the new price. If your Service subscription is on a period basis (for example, monthly), with no specified duration, then any change in pricing will be effective on the date indicated by Microsoft. If you do not agree to such change, then you must cancel your Service subscription and stop using the Service prior to the effective date of such change. Your continued use of the Service after the effective date of such change constitutes your acceptance of and agreement to such change. If you terminate your Service subscription, then such termination will be effective at the end of your current Service subscription term or, if your account is billed on a period basis, at the end of the period in which you provide such notice. The charges for the Service are payable in advance, unless stated otherwise.

If the amount to be charged to your Billing Account varies from the amount you have preauthorized, you have the right to receive, and Microsoft will so provide, notice of the amount to be charged and the date of the charge at least 10 days before the scheduled date of the transaction. Your agreement with your Payment Method Provider will govern your use of that Payment Method. You agree that Microsoft may accumulate charges incurred during one or more of your monthly billing cycles and submit them as one or more aggregate charges at any time. MICROSOFT MAY CONTINUE TO SUBMIT ALL RECURRING OR PERIODIC CHARGES FOR THE SERVICE WITHOUT FURTHER AUTHORIZATION FROM YOU, UNTIL YOU PROVIDE PRIOR NOTICE (CONFIRMED IN WRITING UPON REQUEST) THAT YOU HAVE TERMINATED THIS AUTHORIZATION OR WISH TO CHANGE YOUR PAYMENT METHOD. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED BEFORE MICROSOFT REASONABLY COULD ACT. TO TERMINATE YOUR AUTHORIZATION CALL XBOX LIVE CUSTOMER SUPPORT. TO CHANGE YOUR PAYMENT METHOD, GO TO THE ACCOUNT MANAGEMENT SECTION OF THE XBOX DASHBOARD.

5.4 Subscription Renewal. If you are subscribed for a monthly subscription, then your subscription will automatically and continuously renew from month to month unless you cancel your subscription prior to the end of that month. If you are subscribed for longer subscription periods (e.g., 3, 6 or 12 months) then unless the terms of that subscription state otherwise, your subscription will automatically and continuously renew for such period at prices then in effect.

5.5 Refund Policies. Except as stated otherwise, or as otherwise provided by applicable law, all charges are non-refundable. Additional information about refunds is available at http://www.xbox.com/live/accounts

5.6 Broadband Connection Charges. You are responsible for all broadband service charges or other connection charges to set up and connect to Xbox Live. Internet connectivity is not part of the Xbox Live subscription fees.

5.7 Billing Statements. Charges on your Billing Account will be summarized for you in email receipt(s) sent to the email address you provided at initial Xbox Live sign-up. You agree that such email receipts are the only statement of your Billing Account that Microsoft needs to provide to you.
IT IS YOUR RESPONSIBILITY TO PRINT OR SAVE A COPY OF EACH EMAIL RECEIPT AND TO RETAIN COPIES FOR YOUR RECORDS. You may request a paper copy of any such email receipt, but you will be charged a retrieval fee. To request a paper copy of an email receipt, call Xbox Live Customer Support. Paper copies will only be provided for a period of 120 days from the date of the charge on your Billing Account. Your inability to view or receive email (e.g. due to your email filter settings) does not extend, or relieve you of, your obligation to pay any amounts owing to

Microsoft. Unless you notify Microsoft of any error within 120 days after it first appears in any email receipt, such statement will be deemed accepted by you for all purposes, including, without limitation, resolution of inquiries made by your Payment Method Provider. YOU RELEASE MICROSOFT FROM ALL LIABILITY AND CLAIMS OF LOSS RESULTING FROM ANY ERROR THAT IS NOT REPORTED TO MICROSOFT WITHIN 120 DAYS AFTER THE ERROR FIRST APPEARS ON THE EMAIL RECEIPT.

5.8 Due Date; Late Charge. All amounts you owe Microsoft must be paid in full on the date such payment is deemed due by Microsoft. You shall pay any late charges that Microsoft assesses on amounts due but not timely paid. The late charge will be the lesser of 1% per month (or 12% per annum) on the total amount due but not paid or the maximum rate that is permitted by law. Microsoft reserves the right to refer your Billing Account to a third party for collection in the event of default. You agree to pay all costs incurred in the enforcement of this Agreement and in collection of any delinquent amounts due, including reasonable attorneys' fees and costs.

5.9 Default. If Microsoft does not receive payment for any charge to your Billing Account, you will be in default and Microsoft may suspend or cancel the Service and your access to the Service. If your Payment Method Provider seeks return of payments previously made to Microsoft, but Microsoft in good faith believes that you are liable for the charges, then, subject to applicable law, Microsoft may seek payment from you and you will also be in default.

6. USE OF COMMUNICATION FACILITIES

Your use of the Service is subject to the Code of Conduct. You also agree not to do any of the following while being connected to the Service:

- Defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- Publish, distribute, or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent, or unlawful topic, name, material, file or information.
- Publish, distribute or disseminate any topic, name, material, file or information that incites discrimination, hate or violence towards one person or a group because of their race, religion, nationality, transgender status, homosexual status or HIV/AIDS status, or that insults the victims of crimes against humanity by contesting the existence of those crimes.
- Use the Service or any material or information which is made available through the Service in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party.
- Upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another's Xbox video game console or other property of another.
- Advertise or offer to sell or buy any goods or services for any non-personal purpose.

- Harvest or otherwise collect information about others, including email addresses, without their consent.
- Create a false identity for the purpose of misleading others.
- Use, download, or otherwise copy, or provide (whether or not for a fee) to a person or entity that is not an Xbox Live member any directory of Xbox Live members, or any other user or usage information or any portion of any of them.
- Interfere with or disrupt networks connected to the Service or violate the regulations, policies, or procedures of such networks.
- View, intercept, or attempt to intercept private communications not intended for you.
- Violate any relevant law or posted guidelines or codes relating to the use of the Service.
- Provide or offer to provide Services for the provision of gaming or wagering services.

Always use caution when giving out any personally identifiable information about yourself or your children. Your communications are not private and can be recorded and used by others.

Game managers and hosts are not authorized Microsoft spokespersons, and their views do not necessarily reflect those of Microsoft.

7. MATERIALS YOU POST OR PROVIDE; YOUR USAGE INFORMATION

For materials or communications you post or otherwise provide or transmit to Microsoft related to the Service (a "Submission"), you grant Microsoft permission to (1) use, copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, modify, translate and reformat your Submission, each in connection with the Service, and (2) sublicense these rights. Microsoft will not pay you for your Submission. Microsoft may remove your Submission at any time. For each Submission, you represent that you have all rights necessary for you to make the grants in this section. Microsoft may monitor your voice mail or other electronic communications and may disclose such information in the event it has a good faith reason to believe it is necessary for purposes of ensuring your compliance with this Agreement, and protecting the rights, property, and interests of any of the Microsoft Parties, as defined below, or any customer of a Microsoft Party. Additionally, you grant Microsoft Parties permission to copy, distribute, transmit, publicly display and perform, and reproduce your game scores, presence on the Service, rankings, statistics and other usage information with or without attribution to your Gamertag, and without notice or compensation to you of any kind.

8. SOFTWARE

Your use of any software associated with the Service will be governed by the terms and conditions of the end user license agreement ("EULA") accompanying such software. If you receive any software that is not accompanied by a EULA, then Microsoft grants to you a non-exclusive, revocable, personal, non-transferable license to use such software solely in connection with the Service and solely on an unmodified Xbox game console.

Microsoft reserves all rights to such software not expressly granted to you in this Agreement. Such software is protected by copyright and other intellectual property laws and treaties. Microsoft or its suppliers own the title, copyright, and other intellectual property rights in such software, and such software is licensed, not sold. The license granted you under this section for such software will terminate on the date your Service subscription terminates. Microsoft may disable such software after the date the Service terminates. You will not disassemble, decompile, or reverse engineer, such software or any equipment included in the Service. Microsoft may automatically check your version of such software and may automatically download upgrades to such software to your computer in order to update, enhance and further develop the Service.

9. RIGHT TO MONITOR AND DISCLOSE

Microsoft has no obligation to monitor your use of the Service or retain the content of any user session. However, Microsoft Parties and third-party game operators reserve the right at all times and without notice to delete any content and to monitor, review, retain and/or disclose any content or other information in Microsoft's possession, however obtained, about or related to you, your use of the Service or otherwise as Microsoft deems necessary or useful to satisfy any applicable law, regulation, legal process or governmental request.

10. SERVICE OPERATION AND EQUIPMENT

The Service may only be accessed with an Xbox video game console, the software and/or hardware of which has not been modified in any way (except for Microsoft authorized repairs and upgrades). Any attempt to disassemble, decompile, create derivative works of, reverse engineer, modify, further sublicense, distribute or use for other purposes either the hardware or software of the Xbox or the Service, is strictly prohibited and may result in termination of your account and/or your ability to access the Service via your Xbox, and the pursuit of other legal remedies by Microsoft. Microsoft may take any legal action it deems appropriate against users who violate Microsoft's systems or network security, and such users may also incur criminal and/or civil liability.

Microsoft reserves complete and sole discretion with respect to the operation of the Service. Microsoft may, among other things: (a) restrict or limit access to the Service; (b) retrieve information from the Xbox used to log onto the Service as necessary to operate and protect the security of the Service, and to enforce this Agreement; and (c) upgrade, modify, withdraw, suspend, or discontinue any functionality or feature of the Service or any game from time to time without notice, which may involve the automatic download of related software directly to your Xbox, and which software may prevent your Xbox from accessing the Service.

11. MICROSOFT MAKES NO WARRANTY

MICROSOFT PROVIDES THE SERVICE "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE," AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH YOU. MICROSOFT, ITS AFFILIATES, ITS RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS AND/OR SUPPLIERS (COLLECTIVELY, THE “MICROSOFT PARTIES”) MAKE NO WARRANTIES. THE MICROSOFT PARTIES DISCLAIM ANY AND ALL WARRANTIES, EXPRESS, STATUTORY AND IMPLIED, INCLUDING WITHOUT LIMITATION (1) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, ACCURACY, TITLE, QUIET ENJOYMENT, NO ENCUMBRANCES, NO LIENS AND NON-INFRINGEMENT, (2) WARRANTIES ARISING THROUGH COURSE OF DEALING OR USAGE OF TRADE, AND (3) WARRANTIES THAT ACCESS TO OR USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE OF THIS AGREEMENT.

12. LIABILITY LIMITATION; YOUR EXCLUSIVE REMEDY

12.1 THE MICROSOFT PARTIES’ AGGREGATE, CUMULATIVE LIABILITY RELATING TO THIS AGREEMENT AND YOUR USE OF THE SERVICE SHALL BE LIMITED TO YOUR ACTUAL, RECOVERABLE, DIRECT DAMAGES , IF ANY, WHICH DAMAGES IN NO EVENT SHALL EXCEED AN AMOUNT EQUAL TO YOUR SERVICE FEE FOR ONE MONTH. RECOVERY OF SUCH DAMAGES IN THIS AMOUNT SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 12.1, THE MICROSOFT PARTIES DISCLAIM ANY AND ALL LIABILITY FOR DAMAGES OF ANY KIND ARISING OUT OF, BASED ON, OR RESULTING FROM THIS AGREEMENT OR YOUR USE OF THE SERVICE.

12.2 IN NO EVENT SHALL ANY OF THE MICROSOFT PARTIES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF, BASED ON, OR RESULTING FROM THIS AGREEMENT OR YOUR USE OF THE SERVICE, EVEN IF ANY OF THE MICROSOFT PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION OF DAMAGES UNDER SECTION 12.2 IS INDEPENDENT OF YOUR EXCLUSIVE REMEDY AND SURVIVES IN THE EVENT SUCH REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE DEEMED UNENFORCEABLE.

12.3 THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION 12 APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (1) BREACH OF CONTRACT, (2) BREACH OF WARRANTY, (3) NEGLIGENCE, OR (4) ANY OTHER CAUSE OF ACTION TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW.

13. CHANGES TO THE SERVICE; ADDITIONAL LIABILITY LIMITATION

THE MICROSOFT PARTIES MAY CHANGE THE SERVICE OR DELETE FEATURES IN ANY WAY, AT ANY TIME AND FOR ANY REASON. As you use the Service, you should expect to receive access to or use information, materials, graphics, software, data and content (collectively, “Content”) originated by Microsoft and persons other than Microsoft (any such person is referred to as a “Third Party”). WITHOUT LIMITING THE GENERALITY OF SECTIONS 11 AND 12, YOU ACKNOWLEDGE AND AGREE THAT THE MICROSOFT PARTIES ARE NOT RESPONSIBLE OR LIABLE FOR (1) ANY CONTENT, INCLUDING WITHOUT LIMITATION, ANY INFRINGING, INACCURATE, OBSCENE, INDECENT, THREATENING, OFFENSIVE, DEFAMATORY, TORTIOUS, OR ILLEGAL CONTENT, OR (2) ANY THIRD PARTY CONDUCT, INCLUDING WITHOUT LIMITATION ANY THIRD PARTY’S UNAUTHORIZED ACCESS TO OR ALTERATIONS OF YOUR SERVICE ACCOUNT, TRANSMISSIONS OR DATA. IN ADDITION, WITHOUT LIMITING THE GENERALITY OF SECTIONS 11 AND 12, YOU ACKNOWLEDGE AND AGREE THAT MICROSOFT IS NOT RESPONSIBLE OR LIABLE FOR (1) ANY VIRUSES OR OTHER DISABLING FEATURES THAT AFFECT YOUR ACCESS TO OR USE OF THE SERVICE, (2) ANY INCOMPATIBILITY BETWEEN THE SERVICE AND OTHER SERVICES, SOFTWARE AND HARDWARE, OR (3) ANY DELAYS OR FAILURES YOU MAY EXPERIENCE IN INITIATING, CONDUCTING OR COMPLETING ANY TRANSMISSIONS OR TRANSACTIONS IN CONNECTION WITH THE SERVICE IN AN ACCURATE OR TIMELY MANNER. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN SECTIONS 5.5, 5.7, 11, 12, 13 AND 18 OF THIS AGREEMENT APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND ARE NOT INTENDED TO DEPRIVE YOU OF ANY MANDATORY PROTECTIONS PROVIDED TO YOU UNDER APPLICABLE LAW.

14. MICROSOFT’S TERMINATION OF SERVICE

Microsoft may terminate or suspend the Service at any time, with or without cause, with or without notice. Upon termination of the Service, your right to use the Service will immediately cease, and Microsoft will have no obligation to provide the Service to you. UPON SUCH CANCELLATION OR SUSPENSION, MICROSOFT MAY STOP DELIVERY OF THE SERVICE, AND ANY INFORMATION YOU HAVE STORED ON THE SERVICE MAY NOT BE RETRIEVED LATER. Termination of the Service by Microsoft will not alter your obligation to pay all charges made to your Billing Account, except that, if Microsoft terminates the Service in its entirety without cause, then Microsoft will refund you on a pro-rata basis the amount of your payment corresponding to the portion of your subscription remaining after such termination.

15. YOUR TERMINATION OF SERVICE

You may terminate the Service at any time, with or without cause, upon notice to Microsoft by calling Xbox Live Customer Service or as otherwise specified by Microsoft. If you are participating in any trial period offer, you must terminate the Service by the end of the applicable trial period to avoid incurring applicable charges. Certain Service offers may require termination charges, and you will pay all such termination charges as specified in the materials describing such offer. Termination of the Service by you will not alter your obligation to pay all charges made to your Billing Account. If your subscription is terminated or cancelled for any reason and you later wish to resubscribe, the earlier subscription information (such as your Gamertag and game statistics) will not be transferable to your new subscription.

16. CHOICE OF LAW AND LOCATION FOR RESOLVING DISPUTES

Claims for enforcement, breach or violation of duties or rights under this Agreement will be adjudicated under the laws of the State of Washington, without reference to conflict of laws principles. All other claims, including, without limitation, claims under or for violation of state consumer protection laws, unfair competition laws, and in tort, will be adjudicated under the laws of your state of residence in the United States. You hereby irrevocably consent to the exclusive jurisdiction and venue of state or federal courts in King County, Washington, USA in all disputes arising out of or relating to the use of the Service.

17. INTERPRETING THE AGREEMENT; ASSIGNMENT

All provisions of this Agreement apply to the maximum extent permitted by applicable law. If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect. Microsoft may assign this Agreement, in whole or in part, at any time with or without notice to you. You may not assign this Agreement, or assign, transfer, resell or sublicense any rights in the Service or your Billing Account. Except as expressly stated herein, this Agreement constitutes the entire agreement between you and Microsoft with respect to the Service and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and Microsoft with respect to the Service. The section titles in the Agreement are solely used for the convenience of the parties and have no legal or contractual significance.

18. YOU HAVE LIMITED TIME TO BRING YOUR CLAIM

YOU AND MICROSOFT AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

19. YOUR NOTICES TO MICROSOFT

Unless otherwise specified herein, notices given by you to Microsoft must be given by email and addressed as stated in the customer support area for the Service, or by postal mail. Send postal mail notices to Microsoft at Microsoft Corporation Attention: Xbox Live Customer Service, One Microsoft Way, Redmond, WA 98052-6399, USA.

20. MICROSOFT'S NOTICES TO YOU; CONSENT REGARDING ELECTRONIC INFORMATION

YOU CONSENT TO MICROSOFT PROVIDING YOU ANY INFORMATION THAT MICROSOFT IS REQUIRED BY LAW TO SEND TO YOU REGARDING THE SERVICE ("REQUIRED INFORMATION") IN ELECTRONIC FORM. MICROSOFT MAY PROVIDE REQUIRED INFORMATION TO YOU (1) VIA EMAIL AT THE EMAIL ADDRESS YOU SPECIFIED WHEN YOU SIGNED UP FOR YOUR SERVICE, (2) BY ACCESS TO A MICROSOFT WEB SITE THAT WILL BE DESIGNATED IN AN EMAIL NOTICE SENT TO YOU AT THE TIME THE INFORMATION IS AVAILABLE, OR (3) BY ACCESS TO A MICROSOFT WEB SITE THAT WILL BE GENERALLY DESIGNATED IN ADVANCE FOR SUCH PURPOSE. NOTICES PROVIDED TO YOU VIA EMAIL WILL BE DEEMED GIVEN AND RECEIVED ON THE TRANSMISSION DATE OF SUCH EMAIL COMMUNICATION. You may request a paper copy of any Required Information. You may request paper copies or withdraw your consent, by calling Xbox Live Customer Support. You may update your email address in the Account Management section of the Xbox Dashboard. If you choose to withdraw your consent, then Microsoft may terminate your Service. Microsoft must receive your paper copy request within 120 days from the date that Microsoft first provided the Required Information to you. Microsoft may charge a reasonable fee for providing such paper copies.

21. HARDWARE AND SOFTWARE REQUIREMENTS

To receive Required Information from Microsoft you must have an email address, a computer (or access to a computer) with Internet Explorer 5.X (or above) or Netscape Navigator 6.X (or above), and software capable of sending and receiving email via the Internet. Also, your computer must be able to print or store Required Information received in a plain-text formatted email message or through a Microsoft Web site using the browser specified above. YOU CONFIRM THAT YOUR COMPUTER SATISFIES THE HARDWARE AND SOFTWARE REQUIREMENTS STATED ABOVE. YOU CONFIRM THAT YOU SPECIFIED A CURRENT EMAIL ADDRESS FOR RECEIVING REQUIRED INFORMATION WHEN YOU SIGNED UP FOR YOUR SERVICE.

22. COPYRIGHT AND TRADEMARK NOTICES

All contents of Xbox Live are: Copyright © 2002-2003 Microsoft Corporation and/or its suppliers, One Microsoft Way, Redmond, Washington 98052-6399 U.S.A. All rights reserved.
Microsoft, Xbox, Xbox Live and/or other Microsoft products and services referenced herein may also be either trademarks or registered trademarks of Microsoft. The names of

actual companies and products mentioned herein may be the trademarks of their respective owners.

23. NOTICES AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT

Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement should be sent to Service Provider's Designated Agent. ALL INQUIRIES NOT RELEVANT TO THE FOLLOWING PROCEDURE WILL RECEIVE NO RESPONSE. Please refer to the Notice and Procedure for Making Claims of Copyright Infringement at www.microsoft.com/info/cpyrtInfrg.htm for further instructions.

24. LANGUAGE

It is the express wish of the parties that this Agreement and all related documents have been drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

XBOX LIVE PRIVACY STATEMENT
Last updated: August 15 2003

A printable version of this Privacy Statement is available on the Xbox.com Web site. You may also call Xbox Live Customer Support at 1-800-4MY-XBOX and ask to have a printed copy mailed to you.

Xbox Live is operated by the Microsoft Corporation and its affiliates ("Microsoft"). This Privacy Statement applies to the collection of information though the console through Xbox Live. It does not apply to other Microsoft sites (including xbox.com or xbox.com/live), products, or services, or any other game-related sites operated by Microsoft or other publishers. By using Xbox Live you consent to the data practices described in this Statement.

Collection of your Personal Information

Use of Xbox Live requires you to create a billing account. When you create an account, you will be asked to provide name, address, credit card number, telephone number, date of birth, and email address. This information may be combined with information obtained from other Microsoft services and other sources.

When you create an account, you will be asked to create a Gamertag. You also may be allowed to pick separate nicknames to use in-game. These Gamertags and nicknames will be shown to other players when you are signed in to Xbox Live and may be displayed with your game stats and presence status, as displayed in-game and/or on the Web. Since these names may be publicly displayed, you should not use your personal information when creating them. You may also have the opportunity to add an attachment of graphics, text, or audio to your stats information. If you do this, that attachment will be able to be viewed or heard by other users of the service via in-game leaderboards.

There is also information about your usage of Xbox Live that is automatically collected by Microsoft. This information can include such activities as: times you sign-in to and sign-off from Xbox Live; games that you have played on Xbox Live; content you purchase on Xbox Live; and game score statistics. This information is used by Microsoft for the operation of Xbox Live, to improve and maintain quality of the service, and to provide general statistics regarding use of Xbox Live, such as determining which games and areas of Xbox Live are most popular. This data also may be used to deliver customized content and advertising to customers whose behavior indicates that they are interested in a particular subject area. Aggregate game title usage information may be shared with game publishers, retailers and broadband service providers so they can assess marketing opportunities related to Xbox Live and assist Microsoft in improving Xbox Live.

Microsoft is able to identify which Xbox console and which version of the Xbox Dashboard you are currently using. This information is used specifically for the purpose of alerting Xbox Live to provide you with appropriate auto-updates to the Xbox Dashboard, and to protect the security of Xbox Live.

Use of your Personal Information

Microsoft collects and uses your personal information to operate Xbox Live and deliver the services you have requested. For example, in addition to the uses described above, we will use your billing information to charge for subscription renewals and premium content purchases, when available. We use your billing address in order to determine which content is available for download in your region. We use the Xbox Dashboard language and billing address to determine which version of policy documents you can view.

Your email address will be used to respond to inquiries and provide requested support services. If you choose to receive information on other Microsoft products and services, or to share your contact and usage information with third parties, marketing messages may be sent to you.

As an Xbox Live subscriber, you will receive a Member Services Update as well as periodic messaging informing you of Xbox Live and Xbox service issues. You will not be able to choose as to whether you want to receive the Member Services Update or these messages, as they are considered a part of the Xbox Live service.

We occasionally hire other companies to provide limited services on our behalf, such as answers to customer questions, fulfillment requests, direct mail offers, Xbox repair services, and statistical analysis of our services. Third-party game publishers and developers also work with us to operate the games available via Xbox Live. We will only provide these companies the information they need to deliver such services, and they are prohibited from using that information for any other purposes.

Microsoft may disclose your personal information if required to do so by law or in the good faith belief that such action is necessary to: (a) conform to the edicts of the law or comply with legal process served on Microsoft; (b) protect and defend the rights or property of Microsoft, including Xbox Live; or (c) act under exigent circumstances to protect the personal safety of users of Microsoft products, its web sites, or the public.

Personally identifiable information that you provide to Microsoft may be stored and processed in the United States or any other country in which Microsoft or its affiliates, subsidiaries, or agents maintain facilities. By using Xbox Live you consent to any such transfer of information outside of your country. Microsoft abides by the safe harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union.

Control of your Personal Information

As part of the account creation process, you will be given the choice as to whether you would like to receive marketing information relating to Xbox, Xbox Live, and other Microsoft products and services and whether you would like to share your contact information and usage data with other selected companies for their own marketing uses. You can change these contact and data sharing preferences at any time in the Account Management section of the Xbox Dashboard.

You may cancel your account to Xbox Live by calling Xbox Live Customer Support at 1-800-4MY-XBOX.

Please be aware that this Privacy Statement and the choices you make on Xbox Live may not apply to personal information you may have provided to Microsoft in the context of other, separately operated, Microsoft products, services or web sites.

Security of your Personal Information

Xbox Live secures the personal information you provide to the service on computer servers in a controlled, secure environment, protected from unauthorized access, use or disclosure. When you create your account, you will be given the option to create a passcode to protect your account information. This passcode can be changed from the Xbox Dashboard when you are logged into the service. It is your responsibility to keep your passcode confidential. Do not share this information with anyone. After you've finished playing a game, you should sign out to protect your account information from subsequent users.

Changes to this Statement

This Privacy Statement applies only to Xbox Live. Microsoft will occasionally update this Privacy Statement. When we do, we will also revise the "last updated" date at the top of the privacy statement. For material changes to this Statement, Xbox Live will notify you by sending a message to the Xbox Dashboard and/or placing a prominent notice on the Xbox.com Web site. We encourage you to periodically review this Privacy Statement to be informed of how Microsoft is protecting your information.

Contact Information

Microsoft welcomes your comments regarding this Privacy Statement. If at any time you believe that Xbox Live has not adhered to this Privacy Statement, please notify us and we will use all commercially reasonable efforts to promptly determine and correct the problem. You can send us a letter via postal mail to the address listed below. You can also send email, from your email account, to supportlive@xbox.com.

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